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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

GEORGE C. CHATMAN, Plaintiff and Appellant, v. ARROWHEAD CREDIT UNION, Defendant and Respondent.	E070413 (Super.Ct.No. CIVDS1413324) OPINION

APPEAL from the Superior Court of San Bernardino County. Thomas S. Garza, Judge. Affirmed

George C. Chatman, Plaintiff and Appellant in pro. per.

Anderson, McPharlin & Conners, Colleen A. Déziel, and Leila M. Rossetti for Defendant and Appellant.

Since 2010, George Chatman has refused to pay income tax. As a result, in 2014, pursuant to an order of the Franchise Tax Board (Board), Arrowhead Credit Union (Arrowhead) took $390.01 from Chatman's savings account and turned it over to the Board. Later, the Board determined that $364.34 of this was traceable to Social Security

benefits, which are protected, by federal statute, from seizure by creditors. The Board sent Chatman a check for this amount, but he refused to accept it because it did not include interest.

In this action, Chatman asserts claims against Arrowhead for violation of civil rights (42 U.S.C. § 1983 [section 1983]) and violation of due process. He seeks $364.34, with interest at 23 percent per day (not per year), $850,000 for emotional distress, and $8 million in punitive damages.

After a full trial, a jury found against Chatman and in favor of Arrowhead. Chatman appeals. However, he has shown no error. Hence, we will affirm.

I

FACTUAL BACKGROUND

Chatman stopped filing federal and state income tax returns in 2010. He believes he is not obligated to pay income tax, primarily because, as he understands it, wages are not "income."

The Board sent Chatman a series of notices of the amount of tax due and of his right to contest the obligation (as we will discuss in more detail in parts IV.C and IV.E, *post*). Finally, on June 6, 2014, the Board served Arrowhead with an "Order to Withhold Personal Income Tax" (Order). (See Rev. & Tax. Code, § 18670.) The Order directed Arrowhead to take as much as $4,441.19 from Chatman's accounts and to forward it to the Board. Under state law, if Arrowhead did not comply, it would become liable for the full amount due. (Rev. & Tax. Code, §§ 18670, subd. (d), 18672.)

Arrowhead reviewed Chatman's checking and savings account to determine whether any Social Security benefits had been direct-deposited into them. Some of the money in his checking account was direct-deposited Social Security benefits. Arrowhead therefore did not remove any money from that account. However, no Social Security benefits had been direct-deposited into his savings account.

The balance in the savings account was $425.01. On June 9, 2014, Arrowhead deducted its $30 fee and the $5 minimum necessary to keep the savings account open and placed a 10-day hold on the remaining $390.01. Also on June 9, 2014, it served the Order, together with a "Notice to Consumer Named in Process," on Chatman. The Order advised him: "To request reimbursement, you must write to [the Board] within 90 days . . . ." After the 10-day hold expired, Arrowhead turned the $390.01 over to the Board.

Chatman protested to Arrowhead, in person and in writing; however, he did not assert, at that time, that the money included Social Security benefits. Arrowhead responded by advising him to contact the Board. Chatman admitted that he did not protest to the Board in writing within 90 days, as directed.

Sometime after this action was filed, Chatman asserted for the first time that the money included Social Security benefits. After reviewing his bank statements, the Board determined that $364.34 of the $390.01 was traceable to Social Security benefits. Accordingly, on March 28, 2017, it sent Chatman a check for $364.34. He returned the check to the Board, asserting that the amount was insufficient because it did not include interest.

Under applicable federal regulations, a financial institution must review a garnishee's accounts to determine whether any Social Security benefits were deposited into them during the preceding 60 days. However, "[t]he financial institution shall perform the account review separately for each account in the name of an account holder against whom a garnishment order has been issued. In performing account reviews for multiple accounts in the name of one account holder, a financial institution *shall not* trace the movement of funds between accounts by attempting to associate funds from a benefit payment deposited into one account with amounts subsequently transferred to another account." (31 C.F.R. § 212.5(f), italics added.)

Tracing requires a "very complicated and complex analysis." It depends on certain assumptions (e.g., "first in, first out" as opposed to "last in, first out"). Tracing would be "outside [Arrowhead's] expertise and knowledge" and would take an "unreasonable" amount of time.

An expert witness confirmed that Arrowhead was not required to determine whether any money in the accounts was indirectly traceable to Social Security benefits. He also testified that Arrowhead's handling of the Order was consistent with applicable statues and regulations, with industry custom and practice, and with Arrowhead's own policies and procedures.

II

PROCEDURAL BACKGROUND

Chatman filed this action against Arrowhead in 2014. The operative (third amended) complaint was arguably uncertain. By stipulation, however, Chatman went to the jury on causes of action for violation of due process, violation of section 1983, and conversion.

In 2018, after a full trial, a jury returned a special verdict finding against Chatman and in favor of Arrowhead on all issues. The trial court entered judgment accordingly.

III

APPELLATE FUNDAMENTALS

We begin with some of the fundamentals of appellate law.

First, an appellate brief must "support each point by argument and, if possible, by citation of authority . . . ." (Cal. Rules of Court, rule 8.204(a)(1)(B).) "One cannot simply say the court erred, and leave it up to the appellate court to figure out why. [Citation.]" (*Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368.) "'We are not bound to develop appellants' argument[s] for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat [a] contention as waived.' [Citation.]" (*Calvert v. Al Binali* (2018) 29 Cal.App.5th 954, 964.)

Second, an appellate brief also must "[s]tate each point under a separate heading or subheading summarizing the point . . . ." (Cal. Rules of Court, rule 8.204(a)(1)(B).)

"Arguments not raised by a separate heading in an opening brief will be deemed waived. [Citations.]" (*Winslett v. 1811 27th Avenue, LLC* (2018) 26 Cal.App.5th 239, 248, fn. 6.)

Chatman has not provided us with headings that summarize his arguments.[1] He makes some assertions repeatedly but randomly throughout his brief (e.g., that the jury must have been biased). He makes others only once, in the midst of an unrelated discussion (e.g., that he is not obligated to pay income taxes).[2] This makes it unreasonably difficult to tell which assertions he is actually relying on as grounds for reversal. We therefore conclude that he has forfeited any arguments whatsoever.

Nevertheless, we discuss his assertions — we do not call them "arguments," because we cannot be sure that is what they are — but only to develop alternative grounds for rejecting them.

IV

THE MERITS OF CHAPMAN'S CLAIMS

A. *State Action*.

Chatman asserts that the jury erred by finding that Arrowhead was not a state actor.

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[1] The only even arguable exception is "Prejudicial Exclusion of Evidence." We discuss the multiple assertions raised under this heading in part V, *post*.

[2] Confusingly, Chatman also assures us that "paying income taxes" is not an issue.

He does not explain why this was error. He merely cites our prior opinion in this case. (*Chatman v. Arrowhead Credit Union* (March 9, 2016, E063264) 2016 Cal.App. Unpub. LEXIS 1724.) There, we held, in the context of a demurrer, that Chatman had adequately alleged that Arrowhead was a state actor. This does not necessarily mean that he proved it after a full trial.

Regarding state action, the jury was instructed: "[I]n order to demonstrate that the acts of Arrowhead . . . constituted state action, George Chatman must establish more than the mere fact that Arrowhead . . . complied with an order from a government agency. He must also prove an additional connection between Arrowhead . . . and the . . . Board, such as a conspiracy between the two parties for the benefit of Arrowhead . . . ." (CT6 **1532**; see also RT2 521 }

Chatman does not argue that this instruction was erroneous. Accordingly, "the adequacy of the evidence must be measured against the instructions given the jury." (*Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1535.) Because there was no evidence of a conspiracy nor of any other connection between the Board and Arrowhead, the jury quite properly found no state action.

B. *Prohibited Taking of Social Security Benefits*.

Chatman asserts that Arrowhead took his Social Security benefits in violation of 42 United States Code section 407(a) (section 407(a)), which provides that Social Security benefits are not "subject to execution, levy, attachment, garnishment, or other legal process . . . ."

It has been repeatedly held that there is no private right of action under section 407(a). (*Jones v. Comm'r of Soc. Sec.* (W.D.N.Y., Dec. 11, 2017, No. 17-CV-6558 CJS) 2017 U.S. Dist. LEXIS 203907, at pp. *20-*21; *Jordan v. Chase Manhattan Bank* (S.D.N.Y. 2015) 91 F.Supp.3d 491, 501-502; *Strine v. Genesee Valley Federal Credit Union* (W.D.N.Y., Jan. 29, 2013, No. 11CV633A) 2013 U.S. Dist. LEXIS 24627 at pp. *4-*7; *Walton v. U.S. Bank* (D. Utah, Oct. 4, 2010, No. 2:09-CV-931) 2010 U.S. Dist. LEXIS 105974 at pp. *8-*13; *Alexander v. Bank of America* (W.D. Mo., Oct. 17, 2007, No. 07-4039-CV-C-NKL) 2007 U.S. Dist. LEXIS 77368 at pp. *5-*6.) We are not aware of any case holding that there is.

A debtor can assert section 407(a) as a defense to a creditor's collection efforts. (*Townsel v. DISH Network L.L.C.* (7th Cir. 2012) 668 F.3d 967, 969; see, e.g., *Bennett v. Arkansas* (1988) 485 U.S. 395, 397-398.) Also, at least arguably, an action under section 1983 can be premised on a violation of section 407(a) — but only if the defendant is a state actor. (*London v. RBS Citizens, N.A.* (7th Cir. 2010) 600 F.3d 742, 745-747; *Walton v. U.S. Bank*, *supra*, at pp. *6-*7.) As discussed in part III.A, *ante*, the jury properly found no state action.

C. *Violation of Due Process*.

Chatman asserts that Arrowhead violated due process.

In this instance, he does cite some minimal authority; however — with one exception, which we discuss below — he does not explain how the cited cases apply here.

In particular, he cites *Sniadach v. Family Finance Corp. of Bay View* (1969) 395 U.S. 337 and *Randone v. Appellate Department* (1971) 5 Cal.3d 536. These stand for the principle that, except in extraordinary situations, due process requires notice and an opportunity to be heard before the state may deprive an individual of a significant property interest. Chatman does not discuss how this applies to these facts.

Chatman did receive repeated notices that the Board was claiming that he owed specified amounts of tax; the notices also told him that he could contest the obligation. In 2012, the Board sent him a "Final Notice Before Levy," which warned him: "We can . . . begin involuntary collection action, without further notice to you, which may include . . . contacting third parties, seizing deposit accounts . . . ." It added, "If you do not think you owe this amount, call us . . . ." It sent him a similar notice in April 2014, before it issued the Order in June 2014. Chatman does not specify any way in which this fell short of the requirements of *Sniadach* and *Randone*.

Admittedly, the Board's procedures gave Chatman only a few days' notice of the *particular* property to be taken, and it did not give him any preseizure opportunity to be heard on his claim that that particular property included Social Security benefits. However, the notice and opportunity to be heard that due process requires relate to the *merits* of the creditor's claim. Preventing a debtor from claiming that particular property is exempt until after that property has already been seized does not violate due process. (7 Witkin, Summary of Cal. Law (11th ed. 2018) Const. Law § 715, pp. 1092-1093.) In *Phillips v. Bartolomie* (1975) 46 Cal.App.3d 346, the court specifically held that

preventing a debtor from asserting a claim that the property seized consists of Social Security benefits until after the seizure does not violate due process. (*Id*. at pp. 349-354.)

Chatman also asserts that Arrowhead could not legally take his property in the absence of a warrant (or similar order of a neutral judicial officer).[3] He has forfeited this particular assertion by failing to cite authority for it.

We reject it in any event. A taxing authority can seize property without a warrant, at least when, as here, the seizure involves no invasion of privacy. (*G.M. Leasing Corp. v. United States* (1977) 429 U.S. 338, 351-352; see also *United States v. National Bank of Commerce* (1985) 472 U.S. 713, 720-721.)

D. *Violation of Section 1983*.

Chatman asserts that Arrowhead was liable under section 1983. Because he had not shown any violation of any federal statutory or constitutional right, it follows that he also has not shown any section 1983 violation.

E. *Liability for Income Tax*.

Chatman asserts that he is not liable for income tax. This assertion is frivolous. (*Cheek v. United States* (1991) 498 U.S. 192, 204-205; *Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 461; see also *United States v. Cooper* (7th Cir. 1999) 170 F.3d 691, 691 ["These arguments, frivolous when first made, have

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[3] This would seem to assert a violation of the Fourth Amendment, not due process. Even if so, however, Chatman can raise it as part of his section 1983 cause of action.

been rejected in countless cases. They are no longer merely frivolous; they are frivolous squared."].)

We also note that the Board sent Chatman notices of proposed assessment for 2010 and 2011. Those warned him that, if he believed the notices were incorrect, he had to file a timely protest in accordance with specified procedures. He failed to do so.[4] As a result, he forfeited any contention that the tax was not due. (Rev. & Tax. Code, § 19042.)

F. *Jury Bias.*

Chatman asserts that the jury verdict was the product of "prejudice[e], bias, and discrimination." His only argument to this effect, however, is that the verdict supposedly is not supported by the law or the evidence; he concludes that the jury must have been biased. As we have already held, however, he has not shown that the verdict was erroneous in any way.

V

EVIDENTIARY ISSUES

A. *Exclusion of Our Prior Opinion.*

Chatman asserts that the trial court erred by excluding our opinion in his prior appeal.

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[4] After the second notice, he did send a letter to the Board, but it notified him that his letter did not comply with the prescribed protest procedures. He does not argue otherwise.

Arrowhead filed a motion in limine to exclude evidence of "the procedural history of this case," as irrelevant, more prejudicial than probative, and hearsay. Chatman responded that this court's prior opinion was relevant and admissible to show Arrowhead's "conduct or character." The trial court granted the motion and excluded the opinion.

Chatman's only argument about this ruling on appeal is that it violated the supremacy clause. He has forfeited this argument by failing to explain how the supremacy clause was violated and by failing to cite relevant authority. The exclusion of evidence that is offered to prove the violation of a federal right does not necessarily violate that same federal right (cf. *People v. Mickel* (2016) 2 Cal.5th 181, 218 ["'As a general matter, the ordinary rules of evidence do not impermissibly infringe on the accused's right to present a defense.'"]) — all the more so if the evidence is irrelevant.

Our prior opinion was, in fact, irrelevant, because it arose on a demurrer; hence, it could not and it did not determine what actually occurred. Moreover, Chatman was offering it for the truth of any assertions in it about Arrowhead's conduct; as such, it was inadmissible hearsay. (See *People v. Woodell* (1998) 17 Cal.4th 448, 458-459.)

B. *Exclusion of Three Exhibits.*

Chatman asserts that the trial court erred by excluding the following three exhibits:

1. Exhibit 37: A publication of the Board explaining the difference between the corporate franchise tax and the corporate income tax.

2. Exhibit 38: This exhibit is not in the record; however, it was described as another publication of the Board.

3. Exhibit 39: The declaration of Ann Wadagnolo, an Arrowhead officer.[5]

He has forfeited this assertion by failing to support it with reasoned argument and relevant authority.

Separately and alternatively, we also reject it on the merits.

The trial court excluded Exhibit 37 as irrelevant, hearsay, and unauthenticated. Each of these reasons was valid. The exhibit was authenticated only as a "Franchise Tax Board document" that "deals with corporation franchise or income tax." This case involved personal income tax, so the corporate franchise tax and the corporate income tax were irrelevant. (Evid. Code, § 350.) The document was an out-of-court statement by the Board — a nonparty — and it was not shown to be within the prior consistent statement exception (*id*., § 1236), the prior inconsistent statement exception (*id*., § 1237), the business records exception (*id*., § 1271), or any other exception to the hearsay rule. (*Id*., § 1200.)

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[5] Arrowhead seems to think the fact that an exhibit is in the clerk's transcript means it was admitted; it complains that Exhibit 37 and 39 were not admitted and thus were "mistakenly included." Actually, the clerk's transcript can include "[a]ny exhibit admitted in evidence, refused, or lodged . . . ." (Cal. Rules of Court, rule 8.122(b)(3)(B).)

The place to look to see whether an exhibit was admitted or excluded is supposed to be the reporter's transcript. (Cal. Rules of Court, rule 8.144(b)(5)(B)(ii).) Here, however, the reporter's transcript inexplicably omits the required index of exhibits. Thus, the only way to tell which exhibits were admitted is to comb through the entire transcript of the trial.

Chatman moved to admit Exhibit 38 before there had been any testimony about it. The trial court allowed him to try to lay a foundation for it, but he did not do so. He also did not move to admit it again before he rested. Thus, clearly the trial court did not err. Moreover, because Exhibit 38 is not in the record, Chatman cannot show that it was even potentially admissible.

Chatman similarly did not move to admit Exhibit 39 before he rested. During his closing argument, he did belatedly move to admit it, but the trial court refused. This was not an abuse of discretion, because otherwise, Arrowhead would have been deprived of the opportunity to counter the exhibit.

Finally, Chatman has not shown that the exclusion of these exhibits, individually or collectively, was prejudicial. (Cal. Const., art. VI, § 13; Code Civ. Proc., § 475; Evid. Code, § 354.)

VI

DISPOSITION

The judgment is affirmed. Arrowhead is awarded costs on appeal against Chatman.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

MILLER
J.